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NOTICE OF ALLOWANCE AND FEE(S) DUE

30031 7590 10/08/2010

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BRIARCLIFF MANOR, NY 10510

EXAMINER

CHING, JOY P

ART UNIT

PAPER NUMBER

3626

DATE MAILED: 10/08/2010

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,114	08/21/2003	Gregory Yurko	011194US2	6683

TITLE OF INVENTION: METHOD AND SYSTEM FOR TRACKING AND MONITORING PATIENT COMPLIANCE WITH MEDICAL DEVICE
USAGE PRESCRIPTION

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$0	\$0	\$1510	01/10/2011

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN **THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE** OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. **THIS STATUTORY PERIOD CANNOT BE EXTENDED.** SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** **Mail Stop ISSUE FEE**
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INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

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Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/645,114 08/21/2003

Gregory Yurko

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TITLE OF INVENTION: METHOD AND SYSTEM FOR TRACKING AND MONITORING PATIENT COMPLIANCE WITH MEDICAL DEVICE USAGE PRESCRIPTION

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$0	\$0	\$1510	01/10/2011

EXAMINER	ART UNIT	CLASS-SUBCLASS
CHNG, JOY P	3626	705-002000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a **Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 _____
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 _____
- 3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature _____

Date _____

Typed or printed name _____

Registration No. _____

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 1746 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 1746 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Notice of Allowability**Application No.**

10/645,114

Examiner

JOY CHNG

Applicant(s)

YURKO ET AL.

Art Unit

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 02/09/2010.
2. ☒ The allowed claim(s) is/are 1, 3-24, 27-35.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date ____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date ____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other ____.

/C. Luke Gilligan/
Primary Examiner, Art Unit 3626

/J. C./
Examiner, Art Unit 3626

Detailed Action

Prosecution History

1. Claims 25-26 were previously canceled.
2. Claim 1 has been amended by an Examiner's amendment.
3. Claims 2 and 36-66 have been canceled by an Examiner's amendment.
4. Claims 1, 3-24 and 27-35 are allowed.

Examiner's Amendment

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to the applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

6. Authorization for this examiner's amendment was given in an interview with Michael Haas on 09/22/2010.

7. Dependent Claim 2 has been appended to independent claim 1. Thus, Claim 2 is canceled by Examiner's Amendment.

8. All claims that are canceled by Examiner's Amendment are Claims 2 and Claims 36-66.

9. Full text of Claim 1 after Examiner's Amendment are shown as follows:

Claim 1: A method of measuring and utilizing efficiency of resources utilized by health care providers in the care of medical conditions, comprising:

- (a) obtaining at a computing device a minimum medical device usage compliance for a medical device for a predetermined compliance;
- (b) obtaining at the computing device a quantity of the compliance periods in a measurement cycle;
- (c) obtaining at the computing device measurements of actual medical device usage of the medical device during the measurement cycle;
- (d) weighting, within the computing device, the measurements of medical device usage for individual usage sessions during the measurement cycle according to a predetermined weighting scheme;

- *(e) determining, within the computing device, whether a compliance period value for the measurement cycle, is at least equal to the minimum medical device usage compliance value, wherein the compliance period value for the measurement cycle is determined on the computing device as the number of compliance periods in the measurement cycle for which the weighted measurements of medical device usage indicate that the actual medical device usage has satisfied the compliance value, and wherein the weighted measurements of medical device usage indicate actual medical device usage has satisfied the compliance value, for a given compliance period responsive to the sum of the weighted measurements for the usage sessions that occurred during the given compliance period being greater than or equal to the compliance value;*
- *(f) obtaining, at the computing device, a medical device usage prescription value; and*
- *(g) comparing via the computing device, the compliance period value with the medical device usage prescription value*

Reasons for Allowance

10. The following as an Examiner's statement of reasons for allowance:

Regarding Claim 1:

The prior art of record neither anticipates nor fairly and reasonably teaches a method of measuring and utilizing efficiency of resources utilized by health care providers in the care of medical conditions, comprising:

- *(a) obtaining at a computing device a minimum medical device usage compliance for a medical device for a predetermined compliance;*
- *(b) obtaining at the computing device a quantity of the compliance periods in a measurement cycle;*
- *(c) obtaining at the computing device measurements of actual medical device usage of the medical device during the measurement cycle;*

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- *(d) weighting, within the computing device, the measurements of medical device usage for individual usage sessions during the measurement cycle according to a predetermined weighting scheme;*
- *(e) determining, within the computing device, whether a compliance period value for the measurement cycle, is at least equal to the minimum medical device usage compliance value, wherein the compliance period value for the measurement cycle is determined on the computing device as the number of compliance periods in the measurement cycle for which the weighted measurements of medical device usage indicate that the actual medical device usage has satisfied the compliance value, and wherein the weighted measurements of medical device usage indicate actual medical device usage has satisfied the compliance value, for a given compliance period responsive to the sum of the weighted measurements for the usage sessions that occurred during the given compliance period being greater than or equal to the compliance value;*
- *(f) obtaining, at the computing device, a medical device usage prescription value; and*
- *(g) comparing via the computing device, the compliance period value with the medical device usage prescription value.*

11. The most remarkable prior art of record is as follows:

- Remes et al.: U.S. Patent 5,706,801
- Nicholson et al.: U.S. Patent 6,249,717 B1
- Kaigler: U.S. Patent Application Publication 2003/0221687 A1
- Kribbs et al: "Objective Measurement Of Patterns Of Nasal CPAP Use By Patients With Obstructive Sleep Apnea", American Review Of Respiratory Disease, 1993, Vol. 147, pp 887-895.
- Burns et al.: U.S. Patent 5,284,133
- Deighan et al.: U.S. Patent 5,517,983
- Camarda et al.: U.S. Patent 6,578,003 B1
- Kano et al.: U.S. Patent 5,359,513

12. The cited prior art of record fails to expressly teach a method reasonably teaches a method of measuring and utilizing efficiency of resources utilized by health care providers in the care of medical conditions, comprising: obtaining at a computing device a minimum medical device usage compliance for a medical device for a predetermined compliance; obtaining at the computing device a quantity of the compliance periods in a measurement cycle; obtaining at the computing device measurements of actual medical device usage of the medical device during the measurement cycle; weighting, within the computing device, the measurements of medical device usage for individual usage sessions during the measurement cycle according to a predetermined weighting scheme; determining, within the computing device, whether a compliance period value for the measurement cycle, is at least equal to the minimum medical device usage compliance value, wherein the compliance period value for the measurement cycle is determined on the computing device as the number of compliance periods in the measurement cycle for which the weighted measurements of medical device usage indicate that the actual medical device usage has satisfied the compliance value, and wherein the weighted measurements of medical device usage indicate actual medical device usage has satisfied the compliance value, for a given compliance period responsive to the sum of the weighted measurements for the usage sessions that occurred during the given compliance period being greater than or equal to the compliance value; obtaining, at the computing device, a medical device usage prescription value; and comparing via the computing device, the compliance period value with the medical device usage prescription value.

13. Any comments considered necessary by the applicant must be submitted no later than the payment of the issue fee, and to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance".

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joy Chng whose telephone number is 571.270.7897. The examiner can normally be reached on Monday-Friday, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT MORGAN can be reached on 571.272.6773. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866.217.9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. C./

27 September 2010

Examiner, Art Unit 3626

/C. Luke Gilligan/

Primary Examiner, Art Unit 3626